IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

DEBORAH ZALUDA, CATHERINE COOKE, DAVID COOKE, JAMES COOKE, LORI COOKE, SAVANNA COOKE, and **PAUL DARBY**, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

APPLE INC.,

Defendant.

Case No. 2019 CH 11771

Hon. Michael T. Mullen

ORDER

This matter is before the Court on Plaintiffs' Second Amended Motion for Class Certification (the "Motion"). The Court has carefully reviewed and considered the parties' extensive submissions, including their briefs, expert declarations, deposition transcripts and voluminous exhibits, as well as the parties' oral arguments made on November 3, 2025. The Court's findings are based on "properly presented" matters "of law or fact," including "pleadings, depositions, affidavits, answers to interrogatories, and … evidence adduced at" the hearing.[1] *See Byer Clinic & Chiropractic, Ltd. v. Kapraun*, 2016 IL App (1st) 143733, ¶ 15. For the reasons below, the Court grants Plaintiffs' Motion.

[1] Plaintiffs submitted an expert declaration in support of their Motion (Nikolas Wolfe). Apple submitted declarations by two experts (Dr. Jing Hu and Dr. John Hansen) and three employees (Sachin Kajarekar, Mahesh Krishnamoorthy, and Kisun You). The parties also submitted exhibits and deposition transcripts. Declarations are cited as "Last Name Decl. (Party)." Deposition transcripts are cited as "Last Name Dep. Tr. (Date) (Party Ex. #)". Exhibits are cited as "Party Exhibit #."

I. BACKGROUND

Plaintiffs' claims involve the operations of Defendant Apple's voice-activated, digital assistant software application, "Siri". Plaintiffs bring this action against Apple alleging that Siri creates, captures, collects, stores, and distributes biometric identifiers and information in violation of sections 15(a), 15(b) and 15(d) of the Illinois Biometric Information Privacy Act ("BIPA"), 740 ILCS 14/1 *et seq*. More specifically, Plaintiffs, who are current or former Illinois residents, allege that through Siri, Apple creates, captures, collects and disseminates their biometric information in the form of "biometric feature vectors" and/or "voiceprints" on their Apple devices and Apple servers, without giving them notice and without obtaining their written consent.

Plaintiffs maintain that Apple has violated BIPA sections 15(a), (b) and (d), and seek statutory damages pursuant to BIPA section 20 for themselves and all similarly-situated class members. Apple disputes that Siri creates or utilizes BIPA-protected voiceprints or biometric information and denies that it is required to comply with BIPA with respect to Siri's functions. On October 22, 2020, the Court determined that Plaintiffs' Amended Class Action Complaint stated viable claims for relief and denied Apple's Motion to Dismiss. On April 3, 2024, the Court ordered Apple to produce Siri server source code for Plaintiffs' experts' review. Plaintiffs, who have each enabled and used Siri on their Apple devices in Illinois during the proposed Class Period (2014 to date), now seek to certify a class of Siri users in Illinois whose voiceprints or biometric information has been allegedly collected and possessed by Apple.

In support of their Motion, Plaintiffs have submitted the Declaration of Nikolas Wolfe, who performed an expert review of Siri source code. Based on Wolfe's findings and other discovery, Plaintiffs contend that Siri utilizes speaker and speech recognition software processes to understand and answer user inquiries and perform user-requested tasks in a uniform manner for all

Siri users.[2] Wolfe attests, and Plaintiffs contend, that in the process of performing its speaker and speech recognition functions, Siri computes, collects, captures and stores biometric identifiers and information that are capable of identifying the speaker.[3] Wolfe attests, and Plaintiffs allege, that Siri's software extracts and computes acoustic and numeric biometric speech vectors ("feature vectors") from the Siri users' audio utterances.[4] Wolfe attests that acoustic feature vectors are biometric in nature because they are capable of being used to identify a speaker.[5] At his deposition, Wolfe testified that numeric feature vectors[6] each contain biometric information unique to the voice of the speaker and are "voiceprints" that can be used to identify the speaker.[7] Wolfe attests, and Plaintiffs allege, that these feature vectors are automatically and uniformly computed by Siri software on each Siri user's device and on Apple's servers and are possessed, used and disseminated by Apple.[8]

Although Apple disputes that Siri creates "voiceprints" subject to BIPA, it has submitted expert evidence with its Opposition that acknowledges that Siri computes feature vectors.[9] Alex Acero, Apple's former Senior Director of Siri, testified at his deposition that these feature vectors are each capable of performing speaker identification.[10] Acero further testified that Apple's senior engineers and Apple's Senior Vice President of Software Systems all described Siri's functions as

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[2] Wolfe Decl. ¶¶ 17, 21, 29, 33-53 (Pl. Mem.).
[3] *Id.*
[4] *Id.*
[5] *Id.*
[6] Including mel-frequency cepstral coefficients ("MFCCs"), mel-filterbanks, supervectors, speaker embeddings and i-vectors.
[7] Nikolas Wolfe Dep. (6/10/25) at 89-90, 103-104, 137-139 (Df. Ex. 13, Df. Opp.).
[8] Wolfe Decl. ¶¶ 33, 38, 47, 48, 49, 52, 53 (Pl. Mem.).
[9] *See e.g.*, Hansen Decl. ¶¶ 108, 113, 115, 125, 131-32 (Df. Opp.) (describing Siri's computations of MFCCs, speech supervectors, speaker embeddings, and i-vectors).
[10] Alex Acero Dep. Tr. (6/4/25) at 53, 202-03 (Df. Ex. 12).

utilizing "voiceprints."[11] A principal and common issue that must be decided in this case is whether the feature vectors computed and utilized by Siri constitute voiceprints, i.e., biometric information, that trigger BIPA's statutory requirements and protections.

Siri software is pre-loaded on Apple's hardware devices – Apple smartphones (iPhones), tablet computers (iPads), smart speakers (HomePods), wearable technology (Apple Watches), laptop computers (Macbooks), desktop computers (iMacs), and headphones (AirPods).[12] Wolfe attests that Siri's software works uniformly on all of these devices.[13] In particular, he attests that in order for Siri to respond to user inquiries, it must understand and interpret the user's speech.[14] Wolfe attests that Siri's speech recognition software – Siri's Automatic Speech Recognition ("ASR") process – automatically and uniformly computes biometric feature vectors for this purpose from every user utterance for every Siri user.[15] Plaintiffs have further cited to Acero's deposition testimony that Siri's speaker and speech recognition processes operated "the same across all devices."[16]

Additionally, Plaintiffs' have cited to the testimony of Eric Neuenschwander, Apple's Senior Director of User Privacy, Child Safety, and Platform Integrity, and Julian Frudiger, Apple's former Privacy Engineering Manager, demonstrating that Apple has utilized uniform privacy policies and disclosures throughout the Class Period for all Siri users, none of which purport to comply with BIPA's notice, consent, or retention policy requirements.[17] While Apple disputes that

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[11] *Id.* at 114.
[12] Amended Complaint, ¶¶ 2-3; Answer, ¶¶ 2-3.
[13] Wolfe Decl. ¶¶ 33, 38, 47, 48, 49, 52, 53 (Pl. Mem.).
[14] *Id.* at ¶¶ 17, 21, 39-48, 53.
[15] *Id.*
[16] Alex Acero Dep. Tr. (6/4/25) at 138 (Df. Ex. 12).
[17] Erik Neuenschwander Dep. Tr. (3/14/25) at 17-19, 23, 28 (Df. Ex. 8); Julian Freudiger Dep. Tr. (6/18/25) at 93-94, 96 (Df. Ex. 10).

the feature vectors which Siri creates from user utterances are "voiceprints", it does not dispute that Siri software processes raw audio into feature vectors, and that it does so in a uniform manner on user devices and Apple servers. Likewise, Apple acknowledges that its privacy policies and disclosures were uniform for all Siri users. The issue of uniformity is particularly relevant to the Court's determination of the appropriateness of class certification in this case.

Apple maintains records of the name, billing address, email address and telephone number of Illinois residents who have created an Apple ID associated with an Apple device capable of running Siri and has the ability to sort its records to identify device users based on their State of residence or telephone number area code.[18] Acero testified at his deposition that Apple "monitors on a regular basis the percentage of device owners who had Siri enabled" and that approximately 20-30% of all device owners enable Siri,[19] resulting in approximately 2.6 – 3.9 million Siri users in Illinois.[20] Wolfe attests, and Plaintiffs allege, that each of these Siri users are subject to the automatic and uniform creation of feature vectors by Siri's ASR processes, which are necessarily performed by Siri on every user utterance to enable Siri to understand and respond to each user's request.[21]

Based on the above, Plaintiffs have proposed the following class:

> All Illinois residents who used the Siri function on any Apple device and had their voiceprints or biometric feature vectors capable of identifying them computed from their voice signals and/or raw audio collected, captured, possessed and/or disseminated by Apple, Inc. from September 19, 2014 to the present.

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[18] Ram Santhanagopal Dep. Tr. (5/30/25) at 15-16, 29-31, 49 (Df. Ex. 9).
[19] Alex Acero Dep. Tr. (6/4/25) at 131, 129 (Df. Ex. 12).
[20] Plaintiffs have cited evidence that there are more than 13 million unique Apple IDs for which there is a billing address in Illinois and a record of the Apple ID being associated with one of the devices capable of running Siri. March 4, 2025 letter from Eric Roberts to David Golub.
[21] Wolfe Decl. ¶¶ 17, 21, 29, 33-53 (Pl. Mem.).

II. LEGAL STANDARD

Class certification is governed in Illinois by 735 ILCS 5/2-801. *Avery Farm Mut. Auto Ins. Co.*, 216 Ill. 2d 100, 125 (2005). A plaintiff seeking to certify a class must satisfy the following requirements:

(1) Numerosity: The class is so numerous that joinder of all members is impracticable.

(2) Commonality and Predominance: There are questions of fact or law common to the class, which common questions predominate over any questions affecting only individual members.

(3) Adequate Representation: The representative parties will fairly and adequately protect the interests of the class.

(4) Appropriateness: A class action is an appropriate method for the fair and efficient adjudication of the controversy.

735 ILCS 5/2-801.

The party seeking class certification bears the burden of establishing all four prerequisites. *Gridley v. State Farm Mut. Auto Ins. Co.*, 217 Ill. 2d 156, 167 (2005). "Whether to certify a class action is within the sound discretion of the trial court," and "[g]enerally, the trial court should err in favor of maintaining a class action." *Walczak v. Onyx Acceptance Corp.*, 365 Ill. App. 3d 664, 673 (2d Dist. 2006).

As noted above, this Court determined that Plaintiffs' claims were viable in its ruling on October 22, 2020 denying Apple's Motion to Dismiss and again in its Order on April 3, 2024 requiring Apple to produce Siri server source code for Plaintiffs' experts' review. To obtain class certification, it is not necessary for Plaintiffs to establish that they will prevail on the merits of the action. While the Court may conduct a factual inquiry to resolve issues of class certification, "the circuit court is not to determine the merits of the complaint, but only the propriety of class

certification, and its factual inquiry and resolution of factual issues is to be limited solely to that determination." *Cruz v. Unilock Chicago,* 383 Ill. App. 3d 752, 764 (2d Dist. 2008); *see Bayeg v. The Admiral at the Lake,* 2024 IL App (1st) 231141¶ 34 ("… (i)n ruling on a plaintiff's motion for class certification, a circuit court must assume the merits of the plaintiff's claim but *may* conduct factual inquiry on the four class-certification requirements (emphasis added)); *see Eisen v. Carlisle & Jacquelin,* 417 U.S. 156, 178 (1974) ("[T]he question is not whether the plaintiff or plaintiffs have stated a cause of action or will prevail on the merits, but rather whether the requirements of Rule 23 are met." (internal quotations marks omitted.).[22] The Court is satisfied from its review of the claims asserted by Plaintiffs, the relevant facts (including the evidence submitted by Plaintiffs and Apple in connection with Plaintiffs' Motion), and applicable substantive law, as detailed below, that the Plaintiffs have satisfied each of the four prerequisites for class certification under 735 ILCS 5/2-801.[23]

III. ANALYSIS

A. Numerosity

Numerosity is satisfied when the class is so numerous that joining all members would render the suit unmanageable. *Gorden v. Boden*, 224 Ill. App. 3d 195, 200 (1st Dist. 1991). Here, the potential class numbers in the millions of Illinois residents who have used Siri from 2014 to

[22] "Given the relationship between [735 ILCS 5/2-801 and Fed. R. Civ. P. 23], federal decisions interpreting Rule 23 are persuasive authority with regard to questions of class certification in Illinois." *Avery,* 216 Ill. 2d at 125.

[23] On July 18, 2025, Defendant filed a memorandum opposing class certification and a separate Motion for Summary Judgment, supported by a 40-page memorandum and voluminous materials (including five expert declarations), which it sought to incorporate into its Opposition. The Court entered, but continued Defendant's motion, pending completion of expert discovery. Defendant's Motion for Summary Judgment is not yet fully briefed and is not presently before the Court.

the present. This plainly satisfies the numerosity requirement. The Court notes that Apple has stipulated to numerosity for purposes of class certification.[24]

B. Commonality and Predominance

"The commonality requirement for class certification requires a showing that: (1) there are questions of fact or law common to the class; and (2) the common questions predominate over any questions affecting only individual members." *Walczak,* 365 Ill. App. 3d at 673. "Determining whether issues common to the class predominate over individual issues requires the court to identify the substantive issues that will control the outcome, assess which issues will predominate, and then determine whether these issues are common to the class." *Smith v. Illinois Central R.R. Co.*, 223 Ill. 2d 441, 449 (2006).

Published Illinois and federal court cases that have considered class certification in BIPA cases demonstrate that courts have unanimously found that common issues involving the operations of a defendant's software predominate in BIPA cases and have ruled in favor of class treatment. Illinois state courts routinely grant class certification in cases involving alleged violations of BIPA. In *Bayeg v. The Admiral at the Lake,* 2024 IL App (1st) 231141, a case involving the use of facial recognition software, the Appellate Court affirmed class certification where "class members allege that they were subject to uniform facial geometry harvesting practices" and uniform disclosure policies. *Id.* at ¶ 17. Similarly, in *McGivney v. ITS Techs. & Logistics, LLC*, the Appellate Court recently affirmed class certification in a BIPA case involving fingerprint scan software as it noted that "the issue to be determined…is whether defendant

[24] Sclar Decl., Ex. B (Pl. Mem.)

improperly collected its employees' biometric information without obtaining written consent." *McGivney v. ITS Techs. & Logistics, LLC,* 2025 IL App (1st) 241961-U, ¶ 21.[25]

Numerous federal courts applying Illinois or similar law have held that BIPA cases involving the use of biometric software templates are particularly well-suited for class treatment. *See e.g., In re Facebook Biometric Info. Privacy Litig.*, 326 F.R.D. 535, 545 (N.D. Cal. 2018), *aff'd sub nom. Patel v. Facebook, Inc.,* 932 F.3d 1264, 1276 (9th Cir. 2019) ("There is no doubt that a template-based class poses common legal and factual questions, namely: did [the defendant]'s ... technology [at issue] harvest biometric identifiers as contemplated under BIPA, and if so, did [the defendant] give users prior notice of these practices and obtain their consent?"); accord *Svoboda v. Amazon.com, Inc.*, 2024 WL 1363718, at *8 (N.D. Ill. Mar. 30, 2024) (granting class certification in a BIPA case involving "virtual try on" technology, finding that "the questions of law and fact underlying the class members' BIPA claims are essentially identical"), *rearg. den.,* 2025 WL 2240408 (N.D. Ill. Jan. 6, 2025); *Johns v. Paycor, Inc.*, 2025 WL 947914 (S.D. Ill. Mar. 28, 2025), *rearg. den.,* 2025 WL 1706569 (S.D. Ill. June 18, 2025) (rejecting defendant's argument in a BIPA fingerprint scan case that individual issues destroyed predominance); *see also Tapia-Rendon v. United Tape & Finishing Co., Inc.,* 2023 WL 5228178, *8 (N.D. Ill. Aug. 15, 2023), *rearg. denied,* 2024 WL 406513 (N.D. Ill. Feb. 2, 2024); *see also Howe v. Speedway LLC,* 2024 WL 4346631, *17 (N.D. Ill. Sept. 29, 2024).

Since this Motion has been under submission, a court in the Northern District of Illinois has certified a class in a BIPA case involving the alleged collection and use of voiceprints by a digital assistant similar to Siri, i.e., Amazon's Alexa digital assistant technology. *Gunderson et al.*

[25] Although this Court recognizes that *McGivney* is not precedential, the court's analysis and reasoning in *McGivney* is sound and has been cited to for persuasive purposes. *See* IL S. Ct. R. 23(e)(1)(b).

v. Amazon.com, Inc. and Amazon.com Services, Inc., 2025 WL 3228934 (N.D. Ill. Nov. 19, 2025). In granting class certification, the *Gunderson* court held "that whether Amazon collected, captured or received through trade, or otherwise obtained biometric identifiers or information is a common question that predominates over any individual inquiries. That is, resolution of the common question is of such nature that determination of its truth or falsity will resolve the issue that is central to the validity of the claim in one stroke." *Id.* at *12.

The Court is persuaded by the scope, volume and unanimity of legal authority in cases involving biometric software templates. This case, which involves speaker and speech recognition software processes applied in a uniform manner for all Siri users, is similarly well-suited for class treatment because common issues of fact and law will predominate over any individual issues. The parties have not cited and the Court's research has not revealed any published case that has denied class certification or overturned a grant of class certification in a case involving BIPA claims. Apple has argued that this case is unlike other putative BIPA class actions. To the contrary, the Court finds that this case is exactly like the BIPA cases that have preceded it with respect to its suitability for class treatment.

The Court finds that common questions of fact and law will predominate in this case, including:

- Whether the feature vectors computed and utilized by Siri constitute voiceprints, i.e., biometric information;
- Whether Apple's Siri software collects, captures or possesses biometric identifiers or information when it processes user utterances on the device;
- Whether Apple's Siri software collects, captures or possesses biometric identifiers or information when it processes user utterances on the server;

- Whether Apple maintains possession and/or control of Plaintiffs' and the Class members' biometric identifiers or information on their Apple devices in violation of BIPA;

- Whether Apple has complied with BIPA's notice, consent, and retention policy provisions, as required by 740 ILCS 14/15 (a), (b) and (d);

- Whether Apple's collection, capture, storage, and/or sharing of Plaintiffs' and the Class members' biometric information or identifiers violated BIPA; and

- Whether Plaintiffs and Class members are entitled to statutory damages pursuant to 740 ILCS 14/20(a).

Apple does not dispute the existence of the common questions set forth above, but contends that individual questions regarding whether and when each class member used Siri, how each class member used it, and where each class member used it will predominate over these common questions. Apple specifically contends that class certification is not appropriate as: (1) Siri is optional and not all Apple device users elect to enable and use Siri; (2) not all Siri users activate Siri in precisely the same manner; and (3) not all of Siri's speech recognition functions were in effect throughout the entire Class Period. The Court disagrees. None of these contentions defeats the predominance of the common questions set forth above for a number of reasons.

First, the proposed Class is defined to include only "Illinois residents who used the Siri function." The fact that some Apple device users do not choose to enable and use Siri is simply irrelevant because any device users who have not enabled and used Siri during the Class Period are not class members. Second, irrespective of how Siri is activated, Plaintiffs have plausibly alleged that Siri's ASR process results in the creation of feature vectors that are capable of identifying an individual for all user utterances. The optional aspects of Siri usage cited by Apple – i.e., enrollment in Siri's speaker recognition technology ("Personalized Hey Siri" or "PHS") and use of Siri's Hey Siri voice trigger activation – do not affect or diminish the validity of Plaintiffs'

claims on behalf of the proposed Class based on Siri's speech recognition processes. Rather, the PHS and Hey Siri options potentially create *additional* BIPA claims for users of those opt-in features. All of the named Plaintiffs have enrolled in PHS and used the Hey Siri voice trigger and are, thus, proper class representatives with respect to these Siri functions (and the feature vectors created by those functions) in this action.

Third, Apple argues that changes in Siri's speech recognition processes during portions of the Class Period will require individual inquiry to determine whether a particular Class member was subject to a particular process. But, again, while the purported changes may have subjected some Siri users to additional voice processing in violation of BIPA, the changes do not affect or diminish the functionality of Siri's uniform ASR computation and use of the users' feature vectors throughout Siri's speech recognition process for all members of the Class before, during or after the changes were in effect.

Moreover, even if some individualized issues exist for some Siri users, Apple fails to explain how these issues would predominate over the common issues affecting millions of Illinois-based Siri users that Plaintiffs have identified. Courts in numerous BIPA cases have rejected defendants' attempts to defeat predominance on the basis of claimed variations in how some class members used the defendant's technology. In *Johns v. Paycor*, a BIPA fingerprint scan case, the defendant raised an argument against predominance similar to Apple's argument here, contending that its customers had the "option" to "configure their devices" and "to choose between different technologies" and that the need for individual determinations of each customer's choices defeated predominance. Although the federal district court agreed that "individual questions ... related to the characteristics and conduct of the customers using [defendant's devices] can fairly be said to

exist in this case,"[26] the court rejected the defendant's contention that those individual questions outweighed the predominance of the common questions concerning whether the defendant's uniform technology violated BIPA. The court noted that:

> [I]ndividual questions do not preclude class certification, and are actually contemplated by Rule 23(b)(3), when the common questions still predominate over the action. ... The nine common questions presented by Plaintiffs represent a significant aspect of the case, *i.e.*, whether Defendant's allegedly uniform practice or course of conduct toward the class violated [BIPA], and can be efficiently answered based on a common nucleus of operative facts and issues for the entire class in this adjudication.
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> *Id.*[27]

Similarly, under Illinois law, the existence of some individual questions does not defeat class certification when the common questions still predominate. "Once the circuit court determines that common questions of law or of fact predominate among the class members, the existence of questions that apply only to individual class members will not defeat the predominating common question." *Bayeg*, 2024 IL App (1st) 231141, ¶ 16; *S37 Management*, 2011 IL App (1st) 102496, ¶ 17. Applying this law, the Appellate Court in *Bayeg* rejected the defendant's argument that predominance based on the defendant's uniform biometric technology was defeated (and class certification should be denied) because individualized inquiry would be necessary as to dates of employment, the managers involved, and the number of times each employee punched the clock. *Bayeg*, 2024 IL App (1st) 231141, ¶ 41.

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[26] *Johns v. Paycor*, 2025 U.S. Dist. LEXIS 59401, *38.

[27] Citing *Beaton v. SpeedyPC Software,* 907 F.3d 1018, 1029 (7th Cir. 2018) ("not every issue must be amenable to common resolution; individual inquiries may be required after the class phase"); *see also Tapia-Rendon,* 2023 WL 5228178, at *8 (rejecting argument that "person-by-person" consideration of defendant's defenses would "predominate over the numerous common issues").

Most recently, in *McGivney,* the Appellate Court rejected the defendant's argument that individualized differences among class members outweighed the predominance of the common BIPA issues or warranted denying class certification, ruling that the differences "would [not] be an impediment to class-wide resolution of the predominant questions in the case, those pertaining to defendant's alleged violations of the BIPA," and noting that "if it is truly necessary, the circuit court could establish subclasses … based on [such differences]." *McGivney v. ITS Techs. & Logistics, LLC,* 2025 IL App (1st) 241961-U, ¶¶ 32-33. The *McGivney* court cited to *Clark v. TAP Pharm. Products, Inc.,* in support of its ruling, as in *Clark,* the court concluded that if there are some questions of law or fact that differ among class members, the court may institute subclasses, but the class action will not be defeated solely because of some factual variations among class members. *Clark v. TAP Pharm. Products, Inc.*, 343 Ill. App. 3d 538, 548-49 (2003). The same is true here.

Although Apple does not dispute that the proposed class consists of millions of Illinois residents who used Siri in Illinois, it asserts that it maintains no records as to which Apple device users have enabled and used Siri, and that the only way Class membership can be established is through "individualized" proof from each potential Class member. According to Apple, these individualized determinations of class membership should be deemed to outweigh the predominance of the common questions concerning Siri's operations described above.

Class action case law makes clear that Apple's argument improperly conflates the criteria for class certification with the wholly different issues of class identification and case management once certification has been granted. An argument similar to Apple's was considered and rejected by the United States Court of Appeals for the Seventh Circuit in *Mullins v. Direct Digital, LLC,* 795 F.3d 654 (7th Cir. 2015). *Mullins* was a deceptive advertising case that involved the sale of

dietary supplements and had been brought pursuant to the Illinois Consumer Fraud and Deceptive Business Practices Act, in which the trial court certified a class of consumer purchasers. The defendant argued on interlocutory appeal to the Seventh Circuit that it had no records of who had purchased its product and that "affidavits from putative class members" would require individualized inquiries and were "insufficient" to support class certification. *Id.* at 661.

The Seventh Circuit held that defendant's challenge to the mode of establishing membership in the class was not a basis to deny class certification. The court explained that Federal Rule 23 requires an objective class definition that "identifies a particular group of individuals ... harmed in a particular way", and that once that basis for certification is established, a trial court "has discretion to allow class members to identify themselves with their own testimony and to establish mechanisms to test those affidavits as needed." *Id.* at 660, 669. The court noted that the defendant's challenges to class membership did not preclude class certification but were issues of class management and further, that the trial court could "wait and see how serious the problem may turn out to be after settlement or judgment." *Id.* at 664. The court noted that the defendant's argument (like Apple's argument here) would seriously curtail the use of class actions in consumer fraud and similar cases and held that "refusing to certify on manageability grounds alone should be the last resort." *Id.*; *see also Beaton* 907 F.3d at 1030 ("individualized inquiries [can] be handled through 'streamlined mechanisms' such as affidavits and proper auditing procedures"). The Court notes that *Mullins* has been followed by district courts in Illinois in BIPA cases.

Addressing Apple's argument relative to the issue of determining whether class members used Siri technology in Illinois, in *Svoboda v. Amazon.com, Inc.*, the court granted class certification in a BIPA action, where Amazon claimed, similar to Apple in the instant matter, an

inability to identify class members. *See Svoboda v. Amazon.com, Inc.*, 2024 WL 1363718, *10 (N.D. Ill. Mar. 30, 2024) ("[t]he Court has the discretion to consider class members affidavits or 'creative solutions to the administrative burdens of the class device.'") (citing *Mullins v. Direct Digital, LLC,* 795 F.3d 654, 30 (7th Cir. 2015)); *see also Gunderson,* 2025 WL 3228934 at *14. As the *Mullins* court held, "before refusing to certify a class that meets the requirements of Rule 23(a), the district court should consider the alternatives as Rule 23(b)(3) instructs rather than denying certification because it may be challenging to identify particular class members. District courts have considerable experience with and flexibility in engineering solutions to difficult problems of case management." *Mullins,* 795 F.3d at 664. This Court agrees with the reasoning and holding of *Mullins* and *Svoboda.* The criteria for identifying Class members are issues of class management, not matters of class certification.

In this case, consistent with *Mullins* and *Svoboda*, potential Class members in Illinois are able to be notified of this action electronically, using the email addresses associated with their Apple IDs (as well as through publication notice). Class members can, if Apple's liability is established, submit claim-affidavits establishing their use of Siri in Illinois that can be cross-checked against their Apple ID's, home addresses, IP addresses and geolocation data. As the *Mullins* court recognized, "we believe a district judge has discretion to allow class members to identify themselves with their own testimony and to establish mechanisms to test those affidavits as needed." *Mullins*, 795 F.3d at 669.

Apple also argues that the extraterritoriality doctrine mandates individual inquiries that override the predominance of the common questions cited above. Courts have consistently rejected this argument as a basis for denying class certification in BIPA actions. *See Gunderson,* 2025 WL 3228934 at *14; *Facebook Biometric Info. Priv. Litig.*, 326 F.R.D. 535, 547 (N.D. Cal. 2018)

("Facebook has not tendered any evidence to indicate that the circumstances relating to the challenged conduct did not occur 'primarily and substantially' within Illinois. Class members do not need to show more in order to sue under BIPA, particularly in light of BIPA's express concerns about data collection by 'major national corporations.'") (cleaned up). Any challenge to a particular Class member's use of Siri in Illinois is properly raised at the damages stage if Plaintiffs prevail on the merits. *Mullins*, 795 F.3d at 671 ("As long as the defendant is given the opportunity to challenge each class member's claim to recovery during the damages phase, the defendant's due process rights are protected").

Finally, Apple contends that individualized damages determinations will be necessary and override the predominance of the common questions. The Court disagrees. Plaintiffs in this case seek liquidated statutory damages authorized by 740 ILCS 14/20. *See* Amended Complaint, Prayer for Relief, ¶ C. If liability and intent (which are both subject to class-wide proof) are established, the damages calculation will be formulaic, and no individual issues need be considered. *See Bayeg*, 2024 IL App (1st) 231141, ¶ 41 (if plaintiff establishes liability, the damages calculation is formulaic); *see also McGivney,* 2025 IL App (1st) 241961-U, ¶¶ 24-25 (damages are formulaic and do not require individual inquiry); *see also Gunderson,* 2025 WL 3228934 at *14. Based on the overwhelming weight of case law and the lack of any dispute with respect to the uniformity of Apple's Siri software in processing of raw audio into feature vectors, as well as accepted case management practices for consumer class actions, the Court finds that common issues clearly predominate over any individual issues.

C. Adequacy of Representation

In determining the adequacy of class representatives, the test "is whether the interests of those who are parties are the same as those who are not joined." *Miner v. Gillette Co.*, 87 Ill. 2d 7, 14 (1981). As the Appellate Court recently held in *McGivney*:

> The bar for representational adequacy is low. For a class representative to be considered adequate, the class representative must: (1) be a member of the class; (2) not be seeking relief that is potentially antagonistic to non-represented members of the class; and (3) have the desire and ability to prosecute the claim vigorously on behalf of herself and the other class members.
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> *McGiveny*, 2025 IL App (1st) 241961-U, ¶ 38.[28]

Apple contends that the named Plaintiffs are not adequate representatives as, *inter alia*, they: lack sufficient knowledge about the case; provided responses to interrogatories that required amendment; and three of the plaintiffs no longer live in Illinois. The Court has reviewed the Plaintiffs' deposition testimony cited by each party and concludes that the six named Plaintiffs in this case satisfy the bar for representational adequacy. Based on their deposition testimony, the Court finds a basis for concluding that each of the Plaintiffs during the proposed class period was at some time a resident of Illinois, who enabled Siri, enrolled in PHS, and used Siri in the state of Illinois.

Each Plaintiff seeks the same relief – statutory damages – which is sought on behalf of the Class. There is no evidence of any conflict between the interests of any of the Plaintiffs and the interests of absent Class members. Moreover, the Plaintiffs have demonstrated their desire and ability to prosecute their claims vigorously on behalf of themselves and other class members by remaining engaged with the case and participating in the discovery process over the last six years.

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[28] Citing *Bayeg*, 2024 IL App (1st) 231141, ¶ 55; *Ballard RN Ctr., Inc. v. Kohll's Pharm. & Homecare, Inc.*, 2014 IL App (1st) 131543, ¶ 46 (*rev'd in part on other grounds*).

Apple's argument that Plaintiffs lack sufficient knowledge of their BIPA claims to be considered adequate representatives is misguided given the technical nature of Plaintiffs' BIPA claims, and the relatively low bar for adequacy of representation. Again, the Court has carefully reviewed Plaintiffs' deposition testimony and finds that each Plaintiff has demonstrated a basic understanding of the claims in this case. Nothing more is required. Plaintiffs are not, nor are they required to be experts. Moreover, it is not clear how the Plaintiffs could gain additional knowledge of technical matters in this case as Apple designated most, if not all, relevant documents and source code as "Attorneys' Eyes Only" in discovery.

To support its inadequacy claim, Apple relies on the decision reached in *Byer Clinic.* In *Byer*, the court held that in addition to an adequate class representative having the desire and ability to prosecute a claim vigorously on behalf of itself and the other class members, an adequate class representative also "requires a sufficient level of knowledge and understanding of the litigation." *Byer Clinic & Chiropractic, Ltd. v. Kapraun,* 2016 IL App (1st) 143733, *9. Specifically, that the class representative must have a general knowledge of the character of the action, his role as a representative, and the core issues in the case. *Id.* at 16. However, the *Byer Clinic* decision has twice been called into question and rejected by subsequent Appellate Court panels. In *Bayeg,* the court questioned whether *Byer* accurately stated Illinois law and stated that "Section 2-801 requires only that '[t]he representative parties will fairly and adequately protect the interest of the class' and says nothing about the representative's knowledge or understanding of the case." *Bayeg*, 2024 IL App (1st), 231141, ¶ 54. The court went on to state that "[t]he class representative 'need only have a marginal familiarity with the facts of his case [ ] and does not need to understand the legal theories upon which his case is based to a greater extent.'" *Id.* at ¶ 55. Citing to *Bayeg*, in *McGivney*, the court characterized *Byer Clinic* as an "outlier" and affirmed that "the true question

for the adequacy of the class representative is whether the named plaintiff can and will fairly represent the unnamed class members." *McGivney*, 2025 IL App (1st) 241961-U, ¶ 40. This Court finds that *Byer Clinic* is inapposite to the facts in this case. The Court further finds that the named Plaintiffs fully satisfy the adequacy standard.

Finally, Apple contends that class certification, if granted, should be limited to class members who used Siri on Apple iPhones. However, Plaintiffs have alleged, and Apple's Senior Director of Siri testified, that Siri works the same "across all devices," and Apple's privacy policies and disclosures to Siri users were the same across all devices. Thus, the common questions of whether Siri creates and uses biometric identifiers or biometric information subject to BIPA's requirements and, if so, whether Apple complied with BIPA's requirements are not limited to Siri iPhone users, but properly include users of all "Siri-enabled devices" in Illinois.

D. Appropriateness

With respect to a determination of appropriateness, Illinois courts have held that "[w]here the first three requirements for class certification have been satisfied, the fourth requirement may be considered fulfilled as well." *Ramirez v. Midway Moving and Storage,* 378 Ill. App. 3d 51, 56 (1st Dist. 2007). While the Court finds that its determinations with respect to numerosity, commonality, and adequacy are sufficient to demonstrate appropriateness, the Court will nonetheless address the appropriateness element, given the arguments Apple has advanced in opposition.

In determining whether to certify a case for class treatment, courts must consider whether "the class action is an appropriate method for the fair and efficient adjudication of the controversy." 735 ILCS 5/2-801(4). "In applying this prerequisite, a court considers whether a class action: (1) can best secure the economies of time, effort and expense, and promote uniformity; or (2)

accomplish the other ends of equity and justice that class actions seek to obtain." *Gordon v. Boden*, 224 Ill. App. 3d 195, 203 (1st Dist. 1991).

Courts in this state have recognized that cases which involve small dollar claims and numerous potential class members further "[t]he policy at the very core of the class action mechanism [which] is to overcome the problem that small recoveries do not provide the incentive for any individual to bring a solo action prosecuting his or her rights," *537 Mgmt. v. Advance Refridgeration Co.*, 2011 IL App (1st) 102496, ¶ 29 (quoting *Amchem Prod. Inc. v. Windsor*, 521 U.S. 591, 617 (1977)), and that "the class action is the only practical means for class members to receive redress – particularly where the claims are small." *Id.*; *see Gordon*, 224 Ill. App. 3d at 203-204.

The Court in *Svoboda* observed that "very few individuals could or would expend the costs involved in litigating a BIPA case. *Svoboda*, 2024 WL 1363718, at *14. Indeed, Apple fails to cite to a single case in which a plaintiff brought an individual BIPA claim. Moreover, the option Apple implicitly urges – millions of individual BIPA cases by Siri users in Illinois – would severely burden the judicial system. *Id.* at *15 ("a class action is superior when it may forestall an inefficient and uneconomical flood of individual lawsuits and/or prevent inconsistent outcomes in like cases, which is an especially powerful concern when ... common issues predominate strongly"). The class action mechanism is designed to protect both the litigants, as well as the judicial system, from such burdens.

Apple argues that BIPA's purposes are not served by assessing windfall damages to uninjured plaintiffs. Class members who prevail on liability are not "uninjured" plaintiffs, and the Illinois Legislature has determined the amount of statutory damages that are due to plaintiffs whose BIPA rights have been violated. Moreover, as the Appellate Court noted in *Bayeg*, the trial court

has the discretion to protect against an unwarranted damages award, and the defendant's "concern about a potentially devastating damages award is immaterial to class certification." *Bayeg*, 2024 IL App (1st) 231141, ¶ 43.

The Court finds that adjudicating this case on a class basis is the most efficient and fair way to proceed and is consistent with the policy goals underlying the class action mechanism. Further, the Court finds and concludes that class treatment is fair, efficient and appropriate.

ACCORDINGLY, IT IS HEREBY ORDERED THAT:

1. Plaintiffs' Second Amended Motion for Class Certification is granted and the following class is certified:

   All Illinois residents who used the Siri function on any Apple device and had their voiceprints or biometric feature vectors capable of identifying them computed from their voice signals and/or raw audio collected, captured, possessed and/or disseminated by Apple, Inc. from September 19, 2014 to the present.

2. The Court appoints Deborah Zaluda, Lori Cooke, James Cooke, Savanna Cooke, Catherine Cooke, and David Cooke to represent the class; and

3. The Court appoints David Golub and Jennifer Sclar of Silver Golub & Teitell LLP, Kevin Forde and Brian O'Meara of Forde & O'Meara LLP and Zachary Freeman and Rachel Simon of Miller, Shakman, Levine & Feldman as class counsel.

DATED: 1-29-2026

ENTER:

Hon. Michael T. Mullen

ENTERED
Judge Michael T. Mullen-2084
JAN 29 2026
MARIYANA T. SPYROPOULOS
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL